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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL LANDS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to amend certain  
2 land subdivision and condominium property regime laws related to  
3 agricultural land, as recommended by the office of planning in  
4 its study of subdivision and condominium property regimes on  
5 agricultural lands on Oahu conducted pursuant to Act 278,  
6 Session Laws of Hawaii 2019.

7           SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is  
8 amended as follows:

9           1. By amending subsection (a) to read:

10           "(a) Within the agricultural district, all lands with soil  
11 classified by the land study bureau's detailed land  
12 classification as overall (master) productivity rating class A  
13 or B and for solar energy facilities, class B or C, shall be  
14 restricted to the following permitted uses:

15           (1) Cultivation of crops, including crops for bioenergy,  
16           flowers, vegetables, foliage, fruits, forage, and  
17           timber;



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- 1           (2) Game and fish propagation;
- 2           (3) Raising of livestock, including poultry, bees, fish,
- 3                 or other animal or aquatic life that are propagated
- 4                 for economic or personal use;
- 5           (4) Farm dwellings, employee housing, farm buildings, or
- 6                 activities or uses related to farming and animal
- 7                 husbandry. "Farm dwelling", as used in this
- 8                 paragraph, means a single-family dwelling located on
- 9                 and ~~[used in connection with]~~ accessory to a farm,
- 10                including clusters of single-family farm dwellings
- 11                permitted within agricultural parks developed by the
- 12                State, or where agricultural activity provides income
- 13                of no less than \$10,000 a year to the family occupying
- 14                the dwelling; provided that agricultural activity
- 15                income shall be determined by any state general excise
- 16                tax return filing or agricultural dedication for the
- 17                parcel or lot of record approved by the county in
- 18                which the dwelling and agricultural activity are
- 19                located;
- 20           (5) Public institutions and buildings that are necessary
- 21                for agricultural practices;



- 1           (6) Public and private open area types of recreational  
2           uses, including day camps, picnic grounds, parks, and  
3           riding stables, but not including dragstrips,  
4           airports, drive-in theaters, golf courses, golf  
5           driving ranges, country clubs, and overnight camps;
- 6           (7) Public, private, and quasi-public utility lines and  
7           roadways, transformer stations, communications  
8           equipment buildings, solid waste transfer stations,  
9           major water storage tanks, and appurtenant small  
10          buildings such as booster pumping stations, but not  
11          including offices or yards for equipment, material,  
12          vehicle storage, repair or maintenance, treatment  
13          plants, corporation yards, or other similar  
14          structures;
- 15          (8) Retention, restoration, rehabilitation, or improvement  
16          of buildings or sites of historic or scenic interest;
- 17          (9) Agricultural-based commercial operations as described  
18          in section 205-2(d)(15);
- 19          (10) Buildings and uses, including mills, storage, and  
20          processing facilities, maintenance facilities,  
21          photovoltaic, biogas, and other small-scale renewable



1 energy systems producing energy solely for use in the  
2 agricultural activities of the fee or leasehold owner  
3 of the property, and vehicle and equipment storage  
4 areas that are normally considered directly accessory  
5 to the above-mentioned uses and are permitted under  
6 section 205-2(d);

7 (11) Agricultural parks;

8 (12) Plantation community subdivisions, which as used in  
9 this chapter means an established subdivision or  
10 cluster of employee housing, community buildings, and  
11 agricultural support buildings on land currently or  
12 formerly owned, leased, or operated by a sugar or  
13 pineapple plantation; provided that the existing  
14 structures may be used or rehabilitated for use, and  
15 new employee housing and agricultural support  
16 buildings may be allowed on land within the  
17 subdivision as follows:

18 (A) The employee housing is occupied by employees or  
19 former employees of the plantation who have a  
20 property interest in the land;



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- 1           (B) The employee housing units not owned by their  
2                   occupants shall be rented or leased at affordable  
3                   rates for agricultural workers; or
- 4           (C) The agricultural support buildings shall be  
5                   rented or leased to agricultural business  
6                   operators or agricultural support services;
- 7           (13) Agricultural tourism conducted on a working farm, or a  
8                   farming operation as defined in section 165-2, for the  
9                   enjoyment, education, or involvement of visitors;  
10                  provided that the agricultural tourism activity is  
11                  accessory and secondary to the principal agricultural  
12                  use and does not interfere with surrounding farm  
13                  operations; and provided further that this paragraph  
14                  shall apply only to a county that has adopted  
15                  ordinances regulating agricultural tourism under  
16                  section 205-5;
- 17           (14) Agricultural tourism activities, including overnight  
18                  accommodations of twenty-one days or less, for any one  
19                  stay within a county; provided that this paragraph  
20                  shall apply only to a county that includes at least  
21                  three islands and has adopted ordinances regulating



1 agricultural tourism activities pursuant to section  
2 205-5; provided further that the agricultural tourism  
3 activities coexist with a bona fide agricultural  
4 activity. For the purposes of this paragraph, "bona  
5 fide agricultural activity" means a farming operation  
6 as defined in section 165-2;

7 (15) Wind energy facilities, including the appurtenances  
8 associated with the production and transmission of  
9 wind generated energy; provided that the wind energy  
10 facilities and appurtenances are compatible with  
11 agriculture uses and cause minimal adverse impact on  
12 agricultural land;

13 (16) Biofuel processing facilities, including the  
14 appurtenances associated with the production and  
15 refining of biofuels that is normally considered  
16 directly accessory and secondary to the growing of the  
17 energy feedstock; provided that biofuel processing  
18 facilities and appurtenances do not adversely impact  
19 agricultural land and other agricultural uses in the  
20 vicinity.

21 For the purposes of this paragraph:



1           "Appurtenances" means operational infrastructure  
2 of the appropriate type and scale for economic  
3 commercial storage and distribution, and other similar  
4 handling of feedstock, fuels, and other products of  
5 biofuel processing facilities.

6           "Biofuel processing facility" means a facility  
7 that produces liquid or gaseous fuels from organic  
8 sources such as biomass crops, agricultural residues,  
9 and oil crops, including palm, canola, soybean, and  
10 waste cooking oils; grease; food wastes; and animal  
11 residues and wastes that can be used to generate  
12 energy;

13       (17) Agricultural-energy facilities, including  
14 appurtenances necessary for an agricultural-energy  
15 enterprise; provided that the primary activity of the  
16 agricultural-energy enterprise is agricultural  
17 activity. To be considered the primary activity of an  
18 agricultural-energy enterprise, the total acreage  
19 devoted to agricultural activity shall be not less  
20 than ninety per cent of the total acreage of the  
21 agricultural-energy enterprise. The



1 agricultural-energy facility shall be limited to lands  
2 owned, leased, licensed, or operated by the entity  
3 conducting the agricultural activity.

4 As used in this paragraph:

5 "Agricultural activity" means any activity  
6 described in paragraphs (1) to (3) of this subsection.

7 "Agricultural-energy enterprise" means an  
8 enterprise that integrally incorporates an  
9 agricultural activity with an agricultural-energy  
10 facility.

11 "Agricultural-energy facility" means a facility  
12 that generates, stores, or distributes renewable  
13 energy as defined in section 269-91 or renewable fuel  
14 including electrical or thermal energy or liquid or  
15 gaseous fuels from products of agricultural activities  
16 from agricultural lands located in the State.

17 "Appurtenances" means operational infrastructure  
18 of the appropriate type and scale for the economic  
19 commercial generation, storage, distribution, and  
20 other similar handling of energy, including equipment,





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1 feedstock, fuels, and other products of agricultural-  
2 energy facilities;

3 (18) Construction and operation of wireless communication  
4 antennas, including small wireless facilities;  
5 provided that, for the purposes of this paragraph,  
6 "wireless communication antenna" means communications  
7 equipment that is either freestanding or placed upon  
8 or attached to an already existing structure and that  
9 transmits and receives electromagnetic radio signals  
10 used in the provision of all types of wireless  
11 communications services; provided further that "small  
12 wireless facilities" shall have the same meaning as in  
13 section 206N-2; provided further that nothing in this  
14 paragraph shall be construed to permit the  
15 construction of any new structure that is not deemed a  
16 permitted use under this subsection;

17 (19) Agricultural education programs conducted on a farming  
18 operation as defined in section 165-2, for the  
19 education and participation of the general public;  
20 provided that the agricultural education programs are  
21 accessory and secondary to the principal agricultural



1 use of the parcels or lots on which the agricultural  
2 education programs are to occur and do not interfere  
3 with surrounding farm operations. For the purposes of  
4 this paragraph, "agricultural education programs"  
5 means activities or events designed to promote  
6 knowledge and understanding of agricultural activities  
7 and practices conducted on a farming operation as  
8 defined in section 165-2;

9 (20) Solar energy facilities that do not occupy more than  
10 ten per cent of the acreage of the parcel, or twenty  
11 acres of land, whichever is lesser or for which a  
12 special use permit is granted pursuant to section 205-  
13 6; provided that this use shall not be permitted on  
14 lands with soil classified by the land study bureau's  
15 detailed land classification as overall (master)  
16 productivity rating class A;

17 (21) Solar energy facilities on lands with soil classified  
18 by the land study bureau's detailed land  
19 classification as overall (master) productivity rating  
20 B or C for which a special use permit is granted  
21 pursuant to section 205-6; provided that:



- 1           (A) The area occupied by the solar energy facilities  
2                   is also made available for compatible  
3                   agricultural activities at a lease rate that is  
4                   at least fifty per cent below the fair market  
5                   rent for comparable properties;
- 6           (B) Proof of financial security to decommission the  
7                   facility is provided to the satisfaction of the  
8                   appropriate county planning commission prior to  
9                   date of commencement of commercial generation;  
10                  and
- 11          (C) Solar energy facilities shall be decommissioned  
12                  at the owner's expense according to the following  
13                  requirements:
- 14                  (i) Removal of all equipment related to the  
15                          solar energy facility within twelve months  
16                          of the conclusion of operation or useful  
17                          life; and
- 18                  (ii) Restoration of the disturbed earth to  
19                          substantially the same physical condition as  
20                          existed prior to the development of the  
21                          solar energy facility.



1 For the purposes of this paragraph, "agricultural  
2 activities" means the activities described in  
3 paragraphs (1) to (3);

4 (22) Geothermal resources exploration and geothermal  
5 resources development, as defined under section 182-1;  
6 or

7 (23) Hydroelectric facilities, including the appurtenances  
8 associated with the production and transmission of  
9 hydroelectric energy, subject to section 205-2;  
10 provided that the hydroelectric facilities and their  
11 appurtenances:

12 (A) Shall consist of a small hydropower facility as  
13 defined by the United States Department of  
14 Energy, including:

15 (i) Impoundment facilities using a dam to store  
16 water in a reservoir;

17 (ii) A diversion or run-of-river facility that  
18 channels a portion of a river through a  
19 canal or channel; and

20 (iii) Pumped storage facilities that store energy  
21 by pumping water uphill to a reservoir at



1 higher elevation from a reservoir at a lower  
2 elevation to be released to turn a turbine  
3 to generate electricity;

4 (B) Comply with the state water code, chapter 174C;

5 (C) Shall, if over five hundred kilowatts in  
6 hydroelectric generating capacity, have the  
7 approval of the commission on water resource  
8 management, including a new instream flow  
9 standard established for any new hydroelectric  
10 facility; and

11 (D) Do not impact or impede the use of agricultural  
12 land or the availability of surface or ground  
13 water for all uses on all parcels that are served  
14 by the ground water sources or streams for which  
15 hydroelectric facilities are considered."

16 2. By amending subsection (f) to read:

17 "[+] (f) [+] Notwithstanding any other law to the contrary,  
18 agricultural lands may be subdivided and leased for the  
19 agricultural uses or activities permitted in subsection (a);  
20 provided that:

21 (1) The principal use of the leased land is agriculture;



1           (2) No permanent or temporary dwellings or farm dwellings,  
2           including trailers and campers, are constructed on the  
3           leased area. This restriction shall not prohibit the  
4           construction of storage sheds, equipment sheds, or  
5           other structures appropriate to the agricultural  
6           activity carried on within the lot; [~~and~~] provided  
7           that any violation of this paragraph shall be subject  
8           to county enforcement authority and fines pursuant to  
9           sections 46-4, 205-12, and 205-13; and

10          (3) The lease term for a subdivided lot shall be for at  
11          least as long as the greater of:

12           (A) The minimum real property tax agricultural  
13           dedication period of the county in which the  
14           subdivided lot is located; or

15           (B) Five years.

16 Lots created and leased pursuant to this section shall be legal  
17 lots of record for mortgage lending purposes and shall be exempt  
18 from county subdivision standards."

19          SECTION 3. Section 514B-52, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



1           "(b) An application for registration of a project in the  
2 agricultural district classified pursuant to chapter 205 shall  
3 include a verified statement, signed by an appropriate county  
4 official, that the project as described and set forth in the  
5 project's declaration, condominium map, bylaws, and house rules  
6 does not include any restrictions limiting or prohibiting  
7 agricultural uses or activities, in compliance with section  
8 205-4.6. The statement shall also include the applicant's  
9 assessment and county comments regarding the availability of  
10 supportive infrastructure, any potential impact on governmental  
11 plans and resources, sensitive environmental resources, and any  
12 other requirements pursuant to county ordinances and rules. The  
13 developer's public report shall include the verified statement  
14 in addition to the information required by section 514B-83. The  
15 commission shall not accept the registration of a project where  
16 a county official has not signed a verified statement."

17           SECTION 4. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20           SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

2

INTRODUCED BY:

*Dan Rames*

JAN 21 2021





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**Report Title:**

Agricultural Lands; Land Subdivisions; Condominium Property Regime

**Description:**

Amends certain land subdivision and condominium property regime laws related to agricultural land, as recommended pursuant to Act 278, Session Laws of Hawaii 2019, to ensure condominium property regime projects within the agricultural district are used for agricultural purposes.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

